

November 8, 2007

Charles Chuman
PO Box 1009
Chesterton, Indiana 46304-0009

Re: Formal Complaint 07-FC-312; Alleged Violation of the Access to Public Records Act by the Town of Dune Acres

Dear Mr. Chuman:

This is in response to your formal complaint alleging the Town of Dune Acres ("Town"), violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Town's response to your complaint for your reference. It is my opinion the Town has not violated the Access to Public Records Act.

BACKGROUND

You allege that you submitted a request to the Town on September 20, 2007 for copies of records related to deer cull permits sent to the Town by the Indiana Department of Natural Resources. In response to your request, the Clerk-Treasurer indicated she did not receive the records. You asked her to obtain the records from the Town Council President. On September 29 you were told by a member of the Town Council that the Town has not received any deer cull correspondence. On September 30 you requested any documentation at any time of deer cull anywhere in the Town records. Upon receiving a response on October 1 that an individual had been appointed Deer Commissioner, you then requested "documentation of secret commissions or secret firearms exemptions to Town Codes." You appeared at the Clerk-Treasurer's office on October 4 to inquire about such records and were told none existed. You received a response from the Council on October 5, indicating that in the past the Town has worked without the formality of written documents. You mailed your complaint on October 6, and I received it on October 9.

The Town responded to your complaint by letter dated October 25. The Town indicated that at the time of your request to the Clerk-Treasurer, the Clerk-Treasurer did not have a copy of the record you sought. The record had been sent by the Department of Natural Resources to the individual serving as Deer Commissioner, who was out of town at the time of your request. When he returned, copies of the records were supplied to you as well as to the Clerk-Treasurer.

The Town further indicates that information relating to the deer cull was provided to Town residents in the Winter 2007 newsletter, which was delivered to all residents with mailboxes.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code §5-14-3-1. The Town is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Town during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made in person or by telephone and the agency does not respond within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a). If the request is made by mail, electronic mail, or facsimile transmission and the agency does not respond within seven days, the request is deemed denied. I.C. §5-14-3-9.

Here you requested deer cull records from the Town Clerk-Treasurer, who indicated she had not yet received the records. While the records of a public agency must be made available for inspection and copying unless an exception to disclosure exists (see I.C. §5-14-3-3), an agency cannot produce records it does not maintain. Since neither the Clerk-Treasurer nor the Council maintained the record at the time of your request, neither could possibly produce the record for you. It is my understanding the Town made the requested record available to you once it received the record.

CONCLUSION

For the foregoing reasons, it is my opinion the Town has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: John Wilhelm, President, Town Council of Dune Acres